

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 10, New Section 3380.1
of the General Industry Safety Orders**

Employer Duty to Pay for Personal Safety Devices and Safeguards**SUMMARY**

On November 15, 2007, at Federal Register, Volume 72, Number 220, pages 64341 through 64430 the United States Department of Labor, Occupational Safety and Health Administration (Fed-OSHA) published a Federal Final Rule for 29 CFR Parts 1910, 1915, 1917 et. seq. entitled, Employer Payment for Personal Protective Equipment (PPE). This Final Rule requires the employer to provide at no cost to the employee protective equipment when such equipment is necessary to protect employees from job-related injuries, illnesses and fatalities. These requirements address PPE of many kinds: head protection, gloves, goggles, welding helmets, safety shoes, safety glasses, face shields, chemical protective equipment, fall protection equipment and so forth. However, the Federal standards provide exceptions for employers having to pay for some items, such as non-specialty safety toe footwear or non-specialty prescription eyewear, when these items are worn off site.

California Labor Code Sections 6401 and 6403 in effect require employers to furnish and use personal safety devices and safeguards in order to render places of employment safe and healthful. The California Supreme Court in Bendix Forest Products Corporation v. Division of Occupational Safety and Health (1979), 25 Cal. 3d 465 held that California law requires an employer to pay for required PPE. However, Title 8 lacks a specific requirement in that regard. It should be noted that existing case law requiring employers to pay for PPE is more effective than the Federal standard, because California enforces the employer's duty to pay for safety devices and safeguards without the exceptions provided in the Federal standard (except for employee-provided personal safety devices and safeguards that are not required by any Title 8, Division 1 standard).

In order to make it clear that state standards (and not just case law) are at least as effective as the counterpart Fed-OSHA standard, the Board staff proposes a new Section 3380.1 based in part on Federal language contained in the aforementioned Federal Register entry and on the Labor Code

and Bendix, thereby making it clear that California employers are to provide all required personal safety devices and safeguards at no cost to the employee.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

New Section 3380.1. Employer Duty to Pay for Personal Safety Devices and Safeguards

This section would clarify to the employer that required personal safety devices and safeguards shall be provided at no cost to the employee whenever any Division 1 safety order requires that they be provided, furnished, used or worn by the employee. This section would clarify the employer's responsibility to pay for required personal safety devices and safeguards as stipulated in Bendix, consistent with the Labor Code and with the Federal standards. The proposal is necessary in order to avoid any ambiguity as to the employer's duty to pay for these personal devices and safeguards.

DOCUMENTS RELIED UPON

1. Federal Final Rule for 29 CFR Parts 1910, 1915, 1917, et. seq., Employer Payment for Personal Protective Equipment (PPE), Federal Register, Volume 72, Number 220, pages 64341-64430, Thursday, November 15, 2007
2. Letter dated July 14, 2008, from Federal OSHA to the Occupational Safety and Health Standards Board
3. Letter dated August 13, 2008, from the Occupational Safety and Health Standards Board to Federal OSHA
4. Bendix Forest Products Corporation, v Division of Occupational Safety and Health (1979), 25 Cal. 3d 465

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.